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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

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**CELESTE J. MATTINA, Regional Director,  
Region 2, National Labor Relations Board,  
for and on Behalf of the NATIONAL  
LABOR RELATIONS BOARD,**

**Petitioner,**

**-against-**

**08 Civ. 6550**

**KINGSBRIDGE HEIGHTS REHABILITATION  
AND CARE CENTER**

**J. Cote**

**Respondent.**

**ECF Case**

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**MOTION FOR DISMISSAL OF OR SUMMARY JUDGMENT  
ON CERTAIN ALLEGATIONS OF STRIKER MISCONDUCT**

Comes now counsel for the Petitioner, Celeste J. Mattina, Regional Director for Region 2 of the National Labor Relations Board (Board), and moves the Court for dismissal of or summary judgment on certain allegations of striker misconduct raised by Respondent, Kingsbridge Heights Rehabilitation and Care Center. In support of this Motion, counsel for Petitioner states the following:

1. On July 23, 2008, the Petitioner filed a Petition for Temporary Injunctive Relief pursuant to Section 10(j) of the

National Labor Relations Act, as amended (Act), 29 U.S.C. Section 160(j).

2. By Order dated August 14, 2008---and modified in relevant respects on August 18 and 20, 2008---this Court granted petitioner's Injunction. Under the Court's Orders, Respondent was required to reinstate every striker who made an unconditional offer to return to work. However, the terms of the Court's Orders also permitted Respondent to identify individuals who had allegedly engaged in misconduct sufficient to justify Respondent in discharging or refusing to reinstate those employees.<sup>1</sup>

3. Respondent was required, under the terms of the Court's Orders, to provide Petitioner and 1199SEIU United Healthcare Workers East ("the Union") with a list of the individuals Respondent alleged engaged in misconduct during the course of the strike, together with the date, time, location, and description of each instance of alleged misconduct, as well as a list of any witnesses and/or documentary evidence Respondent intended to present in support of each misconduct allegation.

4. On August 15 and 28, 2008, pursuant to Order of the Court, Petitioner submitted brief statements of the principles of

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<sup>1</sup> In the initial order, Respondent was to identify all the individuals it alleged had engaged in misconduct by 10:00 a.m. on Monday, August 18, 2008, and hearings regarding the alleged instances of misconduct were to be held on August 19 and 20, 2008. Upon agreement of the parties, that portion of the Court's Order was modified to permit Respondent to identify up to six individuals who had allegedly engaged in more serious misconduct by 5:00 p.m. on August 19, 2008, and such individuals were to not return to work pending adjudication of their alleged misconduct on September 3 and 8, 2008. Respondent failed to timely identify such individuals. Consequently, by Order of August 20, 2008, the Court ordered all of the unfair labor practice strikers to be reinstated pending the previously scheduled hearings for September 3 and 8, 2008.

law governing an employer's refusal to reinstate an employee the employer contends has engaged in misconduct during the course of a strike. Although Respondent was given an opportunity to make its own submissions, it did not do so, effectively conceding the accuracy of Petitioner's statements of law.

5. On August 22, 2008, at around 4:44 p.m., by electronic mail, Respondent sent counsel for Petitioner the list contemplated by subparagraph (m)(2) of the Court's August 18, 2008 Order. A copy of that list is attached hereto as Exhibit A.

6. The Court heard testimony and accepted evidence from Respondent in support of the allegations contained in Exh. A on September 3, 2008.

7. At the conclusion of Respondent's presentation, counsel for Petitioner made oral motions for dismissal of or summary judgment on various of the allegations contained in Exh. A. The Court granted the motions with respect to some of the allegations and reserved judgment on others. The Court granted the parties an opportunity to make submissions regarding the matters on which the Court had reserved judgment.

8. Following review of the transcript of the September 3, 2008 hearing, Petitioner now moves this Court for dismissal or summary judgment on further of the allegations contained in Exh. A, specifically items 25 through 28.

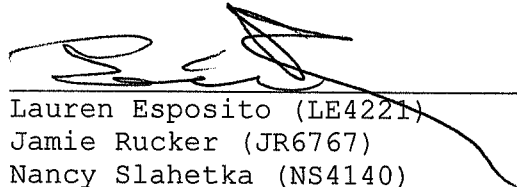
9. Specifically, Petitioner contends that the evidence presented by Respondent has failed to connect the individual employees accused of misconduct in items 25, 26, and 28 with the events to which Respondent's witness testified. With respect to

item 27, Petitioner contends that Respondent has not established conduct constituting misconduct.

10. Consequently, Petitioner contends that Respondent has failed "to make a showing sufficient to establish the existence of an element essential to [its] case," and Petitioner is entitled to "judgment as a matter of law because [Respondent] has failed to make a sufficient showing on an essential element of [its] case with respect to which [it] has the burden of proof." *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-323 (1986). The Court should therefore dismiss or grant summary judgment with respect to those specific allegations of striker misconduct.

DATED: New York, New York  
September 5, 2008

Respectfully submitted,



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KINSBRIDGE HEIGHTS REHABILITATION AND CARE CENTER

NOTICE OF STRIKE MISCONDUCT

August 22, 2008

Pursuant to the August 14, 2008 Order of the United States District Court for the Southern District of New York (Hon. Denise Cote, U.S.D.J.), as modified by Order dated August 18, 2008, Kingsbridge Heights Rehabilitation and Care Center hereby provides notice of alleged incidents of strike misconduct by employees represented 1199SEIU United Healthcare Workers East:

Name: Sivasakhy Ramalingam  
Date(s): (1) June 2008, (2) June 16, 2008  
Time(s): 5:30 p.m.  
Location(s): (1) Road in front of facility  
Description of Misconduct:

- (1) Threw open can of soda at Jozef Hubacek
- (2) Kicked car and pounded fists braking windshield, threw trash can at car

List of Witnesses/Documentary Evidence:

- (1) Jozef Hubacek/Affidavit
- (2) Helen Sieger

Name: Jacqueline Codewell  
Date(s): February 20, 2008  
Time(s): 6:45 a.m.  
Location(s): Outside facility  
Description of Misconduct:

Grabbed Nelly Tchilingirov and her purse as she tried to enter facility

List of Witnesses/Documentary Evidence:

Nelly Tchilingirov/Statement

Name: Sandra Bryant  
Date(s): April 10, 2008  
Time(s): 9:00 a.m.  
Location(s): Outside facility  
Description of Misconduct:

Spilled soda on Nina Kutsenko as she tried to enter facility

List of Witnesses/Documentary Evidence:

Nina Kutsenko/Statement



Name: Stanislaw Skumial  
Date(s): February 25, 2008  
Time(s): 10:00 a.m.  
Location(s): Outside facility  
Description of Misconduct:  
Screaming profanity and threat to beat up Jozef Hubacek  
List of Witnesses/Documentary Evidence:  
Jozef Hubacek/Statement

Name: Tomasz Skarupski  
Date(s): February 19, 2008  
Time(s): 11:00 a.m.  
Location(s): Parking lot in front of facility  
Description of Misconduct:  
Threatened to slash Jozef Hubacek's throat  
List of Witnesses/Documentary Evidence:  
Jozef Hubacek/Statement

Name: Jeffry Wojciechowski  
Date(s): June 17, 2008  
Time(s): 3:00 p.m.  
Location(s): Outside facility  
Description of Misconduct:  
Threatened to have Jozef Hubacek beaten up  
List of Witnesses/Documentary Evidence:  
Jozef Hubacek/Statement

Name: Isaac Norety  
Date(s): February 29, 2008  
Time(s): 9:30 p.m.  
Location(s): Side of building  
Description of Misconduct:  
Cursing, shoving and threatening Stephanie Futrell  
List of Witnesses/Documentary Evidence:  
Stephanie Futrell/Statement

Name: Person not identified  
Date(s): March 16, 2008  
Time(s):  
Location(s): Outside facility  
Description of Misconduct:  
Coffee thrown at, hit, kicked, and pulled hair of Diana Butler  
List of Witnesses/Documentary Evidence:  
Diana Butler/Statement

Name: Josef Wyrwal

Date(s): June 2008

Time(s): 11:00 p.m.

Location(s): On sidewalk, Cannon Place

Description of Misconduct:

Pushed Zulma Ruiz-Reyes against a car, smacked her and threatened to beat her up

List of Witnesses/Documentary Evidence:

Zulma Ruiz-Reyes/Statement

Name: David Thomas

Date(s): July 3, 2008

Time(s): 11:05 p.m.

Location(s): Near parking lot of facility

Description of Misconduct:

Threw water at employees leaving work

List of Witnesses/Documentary Evidence:

Marie Faye/Statement

Bernard Hammond/Statement

Neil Gray

Name: Kervin Campbell

Date(s): July 3, 2008

Time(s): 11:05 p.m.

Location(s): Near parking lot of facility

Description of Misconduct:

Threw chairs and empty bottles at Bernard Hammond and Neil Gray

List of Witnesses/Documentary Evidence:

Marie Faye/Statement

Bernard Hammond/Statement

Neil Gray

Name: Sharon Loechel

Date(s): February to present

Time(s): 3 p.m.

Location(s): Outside facility

Description of Misconduct:

Cursing at Karen Dewess threatening bodily harm

List of Witnesses/Documentary Evidence:

Karen Dewees/Statement

Name: Marsha Dussard  
Date(s): March 26, 2008  
Time(s): 5:30 p.m.  
Location(s): Outside facility  
Description of Misconduct:  
Brandishing knife  
List of Witnesses/Documentary Evidence:  
Angelique Roofe/Statement

Name: Marsha Dussard  
Date(s): March 26, 2008 (May 2008?)  
Time(s): 3:20 p.m.  
Location(s): Outside facility  
Description of Misconduct:  
Threw water at Angelique Roofe  
List of Witnesses/Documentary Evidence:  
Angelique Roofe/Statement  
Angela McLeod/Statement  
Tina Hill/Statement

Name: Zina Montgomery  
Date(s): March 16, 2008  
Time(s): 2:30 p.m.  
Location(s): Between Giles and Kingsbridge Heights  
Description of Misconduct:  
Threw water at and called Diatom Sadio names  
List of Witnesses/Documentary Evidence:  
Diatom Sadio/Statement

Name: Brenda Robinson  
Date(s): April 8, 2008, and continuing when leave work  
Time(s): 6:00 p.m.  
Location(s): Grocery store at Broadway and 231<sup>st</sup> Street, outside facility  
Description of Misconduct:  
Screamed and threatened that (Aznieszke Szereszewski) is going to die  
List of Witnesses/Documentary Evidence:  
Agnieszke Szereszewski/Statement

Name: Olivia Owusu  
Date(s): April 8, 2008, and continuing when leaving work  
Time(s): 6:00 p.m.  
Location(s): Grocery store at Broadway and 231<sup>st</sup> Street, outside facility  
Description of Misconduct:  
Screamed and threatened that (Aquieszke Szereszewski) is going to die  
Profanities, and insults directed toward her  
List of Witnesses/Documentary Evidence:  
Agnieszka Szereszewski/Statement



Name: Olivia Owusu

Date(s): February 20-22, 2008

Time(s): 3:05 p.m.

Location(s): Outside facility

Description of Misconduct:

Threat of physical harm to Mariah Sangare, and profanities directed to her

List of Witnesses/Documentary Evidence:

Mariah Sangare/Statement

Name: Jackie Sinnono

Date(s): February 27, 2008, June 18, 2008

Time(s): 10:00 p.m., 3:00 p.m.

Location(s): Street in front of West Building

Description of Misconduct:

Screaming at and insulting the Szereszewski's, and their daughter

List of Witnesses/Documentary Evidence:

Agnieszka Szereszewski/Statement

Antoni Szereszewski/Statement, Viktor Dedi, Ryszarol Szereszewski

Name: Verna Wattley

Date(s): June 10, 2008

Time(s): 7:00 a.m.

Location(s): Facility parking lot

Description of Misconduct:

Cursing and making derogatory statement to Antoni Szereszewski

List of Witnesses/Documentary Evidence:

Antoni Szereszewski/Statement

Name: Brenda Robinson

Date(s): February 20-22, 2008

Time(s): 3:05 p.m.

Location(s): Outside facility

Description of Misconduct:

Following, intimidating Mariah Sangare, profanities directed to her and family

List of Witnesses/Documentary Evidence:

Mariah Sangare/Statement

Name: Veronica Jackson

Date(s): February 20-22, 2008

Time(s): 3:05 p.m.

Location(s): Outside facility

Description of Misconduct:

Following, intimidating Mariah Sangare, profanities directed to her and family

List of Witnesses/Documentary Evidence:

Mariah Sangare/Statement

Name: Lily Miller  
Date(s): June 16, 2008  
Time(s): 5:30 p.m.  
Location(s): Outside facility  
Description of Misconduct:  
Blocked car Helen Sieger's car  
List of Witnesses/Documentary Evidence:  
Helen Sieger/Affidavit

Name: Isaac Nortey  
Date(s): May 23, 2008  
Time(s): 9:40 a.m.  
Location(s): Outside facility  
Description of Misconduct:  
Punched Helen Sieger  
List of Witnesses/Documentary Evidence:  
Helen Sieger/Affidavit

Name: Alejandra Hernandez  
Date(s): 4/17/08  
Time(s): 5:05 p.m.  
Location(s): Fort Independence & Giles  
Description of Misconduct:  
Physical assault and battery of Nakeysha Middleton, including pulling of hair  
List of Witnesses/Documentary Evidence:  
Nina Kutsenko and Nakeysha Middleton  
Affidavit of Nina Kutsenko

Name: Marsha Dussard  
Date(s): August 14, 2008  
Time(s): 5:30 p.m.  
Location(s): Cannon Place  
Description of Misconduct:  
Physical assault and battery of Nina Kutsenko  
List of Witnesses/Documentary Evidence:  
Nina Kutsenko

Name: Brenda Robinson  
Date(s): August 14, 2008  
Time(s): 5:30 p.m.  
Location(s): Cannon Place  
Description of Misconduct:  
Physical assault and battery of Nina Kutsenkso  
List of Witnesses/Documentary Evidence:  
Nina Kutsenko

Name: Olivia Owusu  
Date(s): August 14, 2008  
Time(s): 5:30 p.m.  
Location(s): Cannon Place  
Description of Misconduct:  
Physical assault and battery of Nina Kutsenkso  
List of Witnesses/Documentary Evidence:  
Nina Kutsenko

Name: Jefferey Wojciechowski  
Date(s): February 22, 2008  
Time(s): 3:15 p.m.  
Location(s): Front of building  
Description of Misconduct: Threatened Martin Hubacek  
List of Witnesses/Documentary Evidence:  
Martin Hubacek/Statement

Name: Jefferey Wojciechowski  
Date(s): March 22, 2008  
Time(s): 9:00 p.m.  
Location(s): Broadway & 238<sup>th</sup> Street  
Description of Misconduct:  
Body slammed and threatened death with knife to Martin Hubacek  
List of Witnesses/Documentary Evidence:  
Martin Hubacek/Statement

Name: Jacqueline Simono  
Date(s):  
Time(s):  
Location(s):  
Description of Misconduct:  
  
List of Witnesses/Documentary Evidence:

Name: Paulette Cameron Scott  
Date(s):  
Time(s):  
Location(s):  
Description of Misconduct:  
List of Witnesses/Documentary Evidence: